

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
4

5 IN RE GOOGLE PLUS PROFILE
6 LITIGATION

CASE NO. CV-18-06164-EJD

SAN JOSE, CALIFORNIA

7 MAY 21, 2020

8 PAGES 1 - 26
9

10 TRANSCRIPT OF ZOOM PROCEEDINGS
11 BEFORE THE HONORABLE EDWARD J. DAVILA
12 UNITED STATES DISTRICT JUDGE

13 A-P-P-E-A-R-A-N-C-E-S BY ZOOM:

14 FOR THE PLAINTIFFS: **MORGAN & MORGAN COMPLEX**
15 **LITIGATION GROUP**

BY: JOHN YACHUNIS

RYAN MCGEE

FRANKLIN AZAR

201 N. FRANKLIN STREET, 7TH FLOOR
17 TAMPA, FLORIDA 33602

18 FOR THE DEFENDANTS: **WILSON, SONSINI, GOODRICH & ROSATI**

19 BY: MAURA L. REES

650 PAGE MILL ROAD

20 PALO ALTO, CA 94304-1050

21 OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, RMR, CRR
22 CERTIFICATE NUMBER 8074

23 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
24 TRANSCRIPT PRODUCED WITH COMPUTER.
25

09:37AM 1 SAN JOSE, CALIFORNIA MAY 21, 2020

09:37AM 2 P R O C E E D I N G S

09:57AM 3 (COURT CONVENED AT 9:57 A.M.)

09:57AM 4 THE COURT: LET'S CALL 18-6164, THIS IS
09:58AM 5 IN RE HP GOOGLE PLUS LITIGATION.

09:58AM 6 MS. KRATZMANN, I THINK YOU CHECKED EVERYONE IN, BUT WHY
09:58AM 7 DON'T I -- I THINK YOU CHECKED EVERYONE IN, BUT WHY DON'T I
09:58AM 8 CAPTURE APPEARANCES AGAIN FOR THE RECORD.

09:58AM 9 IF I COULD HAVE THE PLAINTIFF STATE YOUR APPEARANCES,
09:58AM 10 PLEASE.

09:58AM 11 MR. YACHUNIS: GOOD MORNING, YOUR HONOR.

09:58AM 12 MY NAME IS JOHN YACHUNIS. I'M HERE WITH RYAN MCGEE WHO IS
09:58AM 13 TO MY LEFT BUT OFF CAMERA, WHO WILL BE ASSISTING ME IN THE
09:58AM 14 PRESENTATION, AND ALSO I BELIEVE FRANKLIN AZAR, MY COCOUNSEL,
09:58AM 15 APPEARING FROM COLORADO. HE IS ALSO MAKING AN APPEARANCE.

09:58AM 16 THE COURT: MR. AZAR, I SEE YOU. WOULD YOU LIKE TO
09:58AM 17 STATE YOUR APPEARANCE?

09:58AM 18 MR. AZAR: THANK YOU, YOUR HONOR.

09:58AM 19 FRANKLIN AZAR FOR THE PLAINTIFFS.

09:58AM 20 THE COURT: THANK YOU. GOOD MORNING.

09:58AM 21 WHO APPEARS FOR THE DEFENDANTS IN THIS MATTER?

09:58AM 22 MS. REES: YOUR HONOR, THIS IS MAURA REES FROM
09:58AM 23 WILSON SONSINI ON BEHALF OF DEFENDANT GOOGLE.

09:58AM 24 THE COURT: THANK YOU. GOOD MORNING.

09:58AM 25 I'M GOING TO ASK YOU TO TURN YOUR VOLUME UP IF YOU WOULD,

09:58AM 1 PLEASE, OR ADJUST YOUR MICROPHONE IF YOU WOULD.

09:58AM 2 GOOD MORNING. IT'S NICE TO SEE EVERYONE. WE ARE
09:58AM 3 PROCEEDING BY WAY OF A ZOOM VIDEOCONFERENCE. THE COVID CRISIS
09:59AM 4 HAS SHUTTERED OUR FACILITY HERE IN SAN JOSE AND OTHERS IN THE
09:59AM 5 NORTHERN DISTRICT, AND WE HAVE ENGAGED AND CONTINUED THE
09:59AM 6 COURT'S BUSINESS VIA TELECOMMUNICATIONS AS WELL AS VIDEO
09:59AM 7 COMMUNICATIONS.

09:59AM 8 SO I APPRECIATE -- AND THANK YOU, COUNSEL, FOR AGREEING TO
09:59AM 9 PARTICIPATE IN THIS FASHION.

09:59AM 10 WHAT WE HAVE ON THIS MORNING IS PLAINTIFFS' MOTION TO
09:59AM 11 APPROVE A MOTION FOR APPROVAL PRELIMINARILY OF THIS CLASS
09:59AM 12 ACTION SETTLEMENT.

09:59AM 13 SO LET ME TURN TO PLAINTIFFS, AND I'LL GIVE YOU AN
09:59AM 14 OPPORTUNITY TO ADVISE THE COURT AS TO WHY YOU BELIEVE THE COURT
09:59AM 15 SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.

09:59AM 16 AND LET ME INDICATE THAT I HAVE READ YOUR DOCUMENTS HERE,
09:59AM 17 DOCUMENT 57 AND OTHERS, THAT ATTEST TO THE SETTLEMENT AND THE
09:59AM 18 REASONS FOR IT.

09:59AM 19 SO LET ME LET COUNSEL PROCEED THEN, PLAINTIFFS' COUNSEL.

09:59AM 20 MR. YACHUNIS, ARE YOU GOING TO TAKE THAT LABOR?

09:59AM 21 MR. YACHUNIS: I AM, YOUR HONOR. THANK YOU SO MUCH.

10:00AM 22 I STARTED LITIGATING PRIVACY LITIGATION IN 1999 AND OVER
10:00AM 23 THE COURSE OF MY TIME LITIGATING PRIVACY, AND PARTICULARLY
10:00AM 24 PRIVACY CLASS LITIGATION, I'VE SEEN A MIGRATION IN TERMS OF THE
10:00AM 25 TYPES OF CLAIMS THAT HAVE ARISEN, AND IT IS IN LARGE PART BASED

10:00AM 1 UPON THE WAY INFORMATION HAS NOW BECOME WHAT I WOULD DESCRIBE
10:00AM 2 SOMETIMES AS THE NEW OIL. IT HAS BECOME, YOU KNOW, VALUABLE BY
10:00AM 3 COMPANIES, AND CERTAINLY THE LARGEST COMPANIES ON THE FACE OF
10:00AM 4 THE EARTH COLLECT INFORMATION AND USE IT FOR VARIOUS PURPOSES.

10:00AM 5 AND IN THIS CASE WE'RE DEALING WITH A SOCIAL MEDIA BRAND
10:00AM 6 OF GOOGLE THAT NO LONGER EXISTS, AND IT WAS TERMINATED SHORTLY
10:00AM 7 AFTER THE ISSUES HERE.

10:00AM 8 WHAT WE HAVE IS IT'S DIFFICULT TO DESCRIBE THIS AS A DATA
10:00AM 9 BREACH BECAUSE WE DON'T HAVE A MALICIOUS HACKER WHO GAINED
10:01AM 10 ENTRY INTO THE INFORMATION SECURITIES SYSTEM, THAT GAINED
10:01AM 11 ACCESS TO APPROXIMATELY 53 MILLION ACCOUNTS OF CONSUMERS
10:01AM 12 WORLDWIDE, AND AGAIN, WE'RE FOCUSSED IN ON ONLY A CLASS
10:01AM 13 DEALING WITH U.S. USERS, U.S. CONSUMERS, PUSHING ASIDE ANYBODY
10:01AM 14 IN THE WORLD BECAUSE OF VARIOUS JURISDICTIONAL ISSUES THAT THE
10:01AM 15 COURT IS WELL AWARE OF.

10:01AM 16 AND WHAT HAPPENED HERE, AS THE COURT SAW FROM THE PAPERS,
10:01AM 17 IS THIRD PARTY APPLICATORS WHO HAD BEEN APPROVED BY GOOGLE TO
10:01AM 18 HAVE ACCESS TO CERTAIN INFORMATION IN THESE ACCOUNTS, THESE
10:01AM 19 ACCOUNTS WERE EXPOSED REGARDLESS OF THEIR PRIVACY SETTINGS THAT
10:01AM 20 INDIVIDUAL CONSUMERS PLACED ON THEIR SOCIAL MEDIA.

10:01AM 21 AND AS YOU KNOW, AND I DON'T KNOW IF THE COURT USES SOCIAL
10:01AM 22 MEDIA, BUT TYPICALLY YOU ARE ALLOWED TO HAVE SETTINGS THAT
10:02AM 23 INDICATE WHO IT IS YOU WANT TO SEE YOUR INFORMATION.

10:02AM 24 OF COURSE IT RANGES FROM NAME AND ADDRESS AND OF COURSE
10:02AM 25 YOUR GMAIL ACCOUNT, BECAUSE EVERYBODY HAS A GMAIL MAIL ADDRESS,

1 TO THINGS THAT ARE PERHAPS MORE SENSITIVE THAT WE CERTAINLY
2 HAVE LAID OUT FOR THE FOUR CLIENTS FROM CALIFORNIA, FLORIDA,
3 AND THE TWO FROM COLORADO.

4 SO WHAT HAPPENED AGAIN WAS THIS INFORMATION WAS AVAILABLE
5 OR EXPOSED AND, YOU KNOW, IT WAS NOT TO MALICIOUS HACKERS, BUT
6 AGAIN, PEOPLE WHO HAD PREVIOUSLY BEEN APPROVED BY GOOGLE TO
7 HAVE ACCESS TO CERTAIN INFORMATION IF CONSUMERS ALLOWED IT.

8 SO IT'S DIFFERENT FROM, FOR INSTANCE, THE EQUIFAX CASE
9 WHERE WE HAD NAMES AND ADDRESSES AND SOCIAL SECURITY NUMBERS,
10 OR OPM WHICH THE COURT IS WELL FAMILIAR SINCE YOU'RE A MEMBER
11 OF THAT PUTATIVE CLASS WHERE YOUR APPLICATION AT THE TIME OF
12 BECOMING A FEDERAL JUDGE AND ALL OF THE INFORMATION EXPOSED OR
13 LAID OUT WAS TAKEN BY, IF YOU BELIEVE ATTORNEY GENERAL BARR,
14 CHINESE HACKERS, BUT IN ANY EVENT THAT CASE IS PENDING BEFORE
15 JUDGE JACKSON IN D.C., AND I HAPPEN TO HAVE THE PLEASURE OF
16 BEING ON THE LEADERSHIP COMMITTEE LEADING THAT EFFORT.

17 SO WHEN WE HAD THIS CASE, WE'RE DEALING WITH PEOPLE WHOSE
18 INFORMATION WAS EXPOSED, NOT NECESSARILY WHAT WE'LL CALL IS
19 EXFILTRATED, MEANING TAKEN, AND THEN MISUSED. WE CERTAINLY
20 DON'T HAVE EVIDENCE OF MISUSE. WE HAVE EVIDENCE OF PEOPLE
21 TAKING ACTION TO PROTECT THEMSELVES. FOR INSTANCE, ONE OF OUR
22 CLIENTS -- ALL OF OUR CLIENTS ARE NOW HAVING TO MONITOR THEIR
23 ACCOUNTS, BUT ONE IN PARTICULAR WENT OUT AND PURCHASED A
24 FIREWALL AS WELL AS ADDITIONAL SECURITY TO PROTECT THE
25 INFORMATION IN HIS GMAIL ACCOUNT AND HIS COMPUTER.

1 SO DEALING WITH THAT KIND OF UNIQUE CIRCUMSTANCE IN THE
2 CASE THAT, FOR ME, WITH A FULL RANGE OF OTHER TYPES OF
3 LITIGATION WAS UNIQUE. WE ENTERED INTO MEDIATION ON AUGUST
4 14TH USING RANDY WULFF, WHO HAS HAD EXPERIENCE MEDIATING
5 PRIVACY CASES, AND OVER THE COURSE OF THE DAY REACHED A
6 SETTLEMENT.

7 BUT ONE OF THE THINGS I MENTIONED, APPROXIMATELY 53
8 MILLION ACCOUNTS, I'M NOT REFERRING TO INDIVIDUALS, I'M
9 REFERRING TO ACCOUNTS. SO IT IS POSSIBLE THAT SOMEBODY HAS
10 MORE THAN ONE ACCOUNT, AND THAT'S TRUE BOTH IN THE GOOGLE PLUS
11 AS WELL AS FACEBOOK.

12 ONE OF THE THINGS THAT WE DID NOT SEEK IN THIS CASE WAS
13 INJUNCTIVE RELIEF BECAUSE SHORTLY AFTER THE SECOND
14 DETERMINATION THAT THERE WAS EXPOSURE OF THIS INFORMATION THAT
15 GOOGLE DECIDED TO SHUT DOWN GOOGLE PLUS, SO THAT PLATFORM, THAT
16 SOCIAL MEDIA PLATFORM NO LONGER EXISTS, SO INJUNCTIVE RELIEF
17 WAS NOT THE FOCUS.

18 IN CONNECTION WITH TRYING TO ASCERTAIN AND PUT OUR HANDS
19 ON EXACTLY WHAT HAPPENED, WE RETAINED SEVERAL EXPERTS. ONE
20 MARY FRANCE HAS BEEN AN EXPERT IN ANY NUMBER OF LARGE CASES,
21 INCLUDING YAHOO, AND OF COURSE MOST RECENTLY EQUIFAX. SHE WAS
22 THE EXPERT IN THE MGM BREACH AND ALSO IN THE CAPITAL 1 BREACH
23 WHICH AFFECTED APPROXIMATELY 94 MILLION.

24 WE ALSO RETAINED AN EXPERT WHO HAS BEEN A DAMAGE MODEL FOR
25 US IN A NUMBER OF CASES, YAHOO, MOST RECENTLY EQUIFAX,

1 CAPITAL 1, THE VERY SAME CASES THAT MARY FRANCE WHO CAME UP
2 WITH A DAMAGE MODEL OF -- USING INFORMATION ON THE DARK WEB,
3 WHAT THIS INFORMATION WAS WORTH IN TERMS OF ACCESS TO SOCIAL
4 MEDIA, AND AS THE COURT SAW, WE PLACED A RANGE OF APPROXIMATELY
5 \$0.20 TO \$29.

6 WHY THE DIFFERENCE IS BECAUSE WHAT MIGHT BE AVAILABLE IN A
7 SOCIAL MEDIA WILL DICTATE WHAT A PERSON, A MALICIOUS HACKER
8 MIGHT PAY ON THE DARK WEB.

9 NOW, AGAIN, WE DON'T HAVE A CASE IN WHICH INFORMATION WAS
10 EXPOSED TO MALICIOUS HACKERS BUT PEOPLE WHO OTHERWISE HAD
11 ACCESS, BUT STILL AS A PRIVACY ADVOCATE, WE HAD A BELIEF THAT
12 PEOPLE SHOULD BE COMPENSATED, AND THAT'S WHY WE REACHED A
13 SETTLEMENT IN THE AMOUNT OF 7.5 MILLION, A NONREVERSIONARY
14 SETTLEMENT WHICH WOULD PROVIDE PEOPLE THE ABILITY IN A SIMPLE
15 CLAIM PROCESS TO GAIN A SUM OF MONEY WHICH WE FELT WAS IN
16 EXCESS OF THE AVERAGE.

17 AND IF THE COURT SAW IN MY DECLARATION, IAN RATNER, A
18 VALUED CREDENTIALS TO GET INTO SOCIAL MEDIA FROM \$0.20 TO \$29
19 WITH AN AVERAGE, NOT A MEAN, BUT AN AVERAGE OF \$2.50. SO
20 THROUGH THIS CLAIM PROCESS PEOPLE HAVE THE ABILITY OF GETTING
21 \$5, AND DEPENDING UPON HOW MUCH MONEY IS AVAILABLE BASED UPON
22 THE CLAIM RATE, WHICH WE ANTICIPATE BASED UPON OTHER
23 SETTLEMENTS, NOT OF THIS TYPE BUT OF THE DATA BREACH TYPE, WE
24 ESTIMATE THERE WILL BE A CLAIM FROM BETWEEN 3 TO 5 PERCENT.

25 AND IN ANY EVENT, THERE IS EXCESS MONEY. PEOPLE HAVE THE

1 ABILITY OF GETTING A SECOND TRANCHE UP TO THE AMOUNT OF \$12.

2 THE SETTLEMENT ALSO IS AN ALL IN AND OTHERWISE IT PAYS FOR
3 NOTICE AND CLAIMS ADMINISTRATORS.

4 WE TOOK AND OBTAINED BIDS OF SIX VERY DETAILED -- I HAPPEN
5 TO HAVE EXPERIENCE WITH ALL OF THEM BECAUSE MY PRACTICE FOR THE
6 LAST TWO AND A HALF DECADES JUST FOCUSSED ON CLASS LITIGATION,
7 AND WE SELECTED ANGEION. IN MY DECLARATION I GAVE THE COURT MY
8 PREVIOUS EXPERIENCE IN THE LAST TWO YEARS WITH ANGEION, AND
9 ANGEION CAME IN THE CHEAPEST, BUT BY NO MEANS ARE THEY CHEAP IN
10 THE SENSE OF THE QUALITY OF DELIVERY THAT THEY ARE ABLE TO
11 PROVIDE.

12 AND PRESENTLY I'VE GOT OTHER BIDS OUT TO THEM FOR
13 CONSIDERATION OF OTHER CASES OF THE DATA BREACH TYPE WHERE
14 INFORMATION WAS, IN FACT, TAKEN BY A MALICIOUS HACKER.

15 SO WE WERE COST EFFICIENT IN MAKING CERTAIN THAT THE MONEY
16 AVAILABLE TO PAY CLAIMS OF THE CLASS WERE SPENT WISELY, AND
17 THAT'S WHY WE SELECTED ANGEION FOR BOTH PURPOSES OF COST
18 EFFECTIVENESS AS WELL AS THE QUALITY OF THE DELIVERY OF THE
19 NOTICE AND THE CLAIMS PROCESS.

20 I MENTIONED THE CLAIM PROCESS. IT'S A VERY EASY ONE. YOU
21 MERELY HAVE TO, YOU KNOW, FILL OUT THE CLAIM FORM AND INDICATE
22 THAT YOU HAD SENSITIVE INFORMATION IN THE GOOGLE PLUS ACCOUNT,
23 AND YOU'LL GET BETWEEN \$5 AND DEPENDING UPON THE AVAILABILITY
24 OF MONEY, AS I MENTIONED, UP TO \$12.

25 IF THERE ARE SUMS LEFT OVER AFTER THE PAYMENT OF CLAIMS OF

10:09AM 1 CLASS MEMBERS, THEN WE WOULD ASK AN INDEPENDENT NEUTRAL, NOT
10:09AM 2 THAT THE PARTIES HAVE ANY SAY IN THIS, AND INDICATE WHO SHOULD
10:09AM 3 SAY WHO SHOULD THE CY PRES RECIPIENT IS SUBJECT TO THE COURT'S
10:09AM 4 APPROVAL.

10:09AM 5 ONE OF THE THINGS THAT OBVIOUSLY IS OF CONCERN AND IT IS
10:09AM 6 CERTAINLY ONE OF THE FACTORS IN THE NORTHERN DISTRICT OF
10:09AM 7 CALIFORNIA IS MY ASSESSMENT OF THE RISK OF TAKING THIS CASE TO
10:09AM 8 TRIAL. I BELIEVE WE COULD GET PAST STANDING, BUT THE ISSUE OF
10:09AM 9 CERTIFICATION IS A SIGNIFICANT ONE.

10:09AM 10 AND JUST RECENTLY BEFORE JUDGE ALSUP I HAD THE PLEASURE OF
10:09AM 11 ARGUING A MOTION FOR CLASS CERTIFICATION. WE WERE ABLE TO
10:09AM 12 SUCCEED IN CERTIFYING A (B) (2) CLASS FOR INJUNCTIVE RELIEF, BUT
10:10AM 13 WE FAILED IN CONNECTION WITH OUR ABILITY TO CONVINCE
10:10AM 14 JUDGE ALSUP TO CERTIFY A DAMAGE CLASS, AND THERE IS PENDING
10:10AM 15 BEFORE JUDGE ALSUP A MOTION FOR A PRELIMINARY APPROVAL OF OUR
10:10AM 16 INJUNCTIVE RELIEF CLASS FOR U.S. CITIZENS.

10:10AM 17 THERE HAS BEEN ONLY ONE CONSUMER CLASS CASE CERTIFIED FOR
10:10AM 18 DAMAGES. IT WAS A HOSPITAL BREACH IN ALABAMA. JIM BOTERO, WHO
10:10AM 19 WAS THE LEAD LAWYER IN THAT CASE, WAS ABLE TO CERTIFY A (B) (3)
10:10AM 20 CLASS FOR CONSUMERS.

10:10AM 21 THE OTHER ONE THAT HAS BEEN CERTIFIED BUT FOR FINANCIAL
10:10AM 22 INSTITUTIONS IS JUDGE MADISON'S DECISION IN TARGET, BUT OF
10:10AM 23 COURSE THAT'S NOT CONSUMERS, THOSE WERE FINANCIAL INSTITUTIONS
10:10AM 24 THAT HAD TO INCUR COSTS TO REPLACE PAYMENT CARDS THAT WERE
10:10AM 25 TAKEN IN THAT BREACH.

1 SO WE HAVE VERY FEW PRECEDENT IN CONNECTION WITH
2 CERTIFICATION. I WOULDN'T HAVE UNDERTAKEN THE CASE IF I WERE
3 NOT CONVINCED THAT I WOULD MAKE YEOMAN'S EFFORT TO GET
4 CERTIFIED, BUT AGAIN, YOU NEVER KNOW WHAT THE COURT MIGHT HAVE
5 DONE WITH A CONTESTED CERT MOTION. AND THEN WE HAVE THE
6 APPELLATE COURT, BOTH THE NINTH AND THE SUPREME COURT, WHICH
7 ALWAYS IN THEIR EMANANT WISDOM MAKE DECISIONS THAT ARE
8 SOMETIMES CONTRARY TO WHAT TRIAL COURTS DECIDE.

9 SO IN MY EXPERIENCE IN ASSESSING THE UPWARDS AMOUNT THAT
10 WE COULD GET, AND AGAIN, WE'RE NOT TALKING ABOUT PEOPLE IN
11 TERMS OF THE 53 MILLION, AND THAT IS A WORLDWIDE NUMBER, WE
12 BELIEVE THAT U.S. ACCOUNTS WERE APPROXIMATELY 7.5 TO 10
13 MILLION.

14 MS. REES CAN TALK IN GREATER DETAIL ABOUT HOW INDIVIDUALS
15 ARE IDENTIFIED WITHIN THAT GROUP, BUT WE WOULD HAVE, YOU KNOW,
16 AGAIN, AT FACE VALUE, 7.5 MILLION.

17 IF THERE WERE 10 MILLION PEOPLE, THAT WOULD BE \$0.75.

18 JUDGE KOH IN THE ANTHEM CASE, THAT WAS 115 MILLION, AND I
19 THINK IT BREAKS DOWN TO A LITTLE BIT OVER A DOLLAR. IN THE
20 YAHOO CASE 117 AND A HALF MILLION. WE HAD 194 MILLION
21 INDIVIDUALS. I VALUE THAT AS A DOLLAR WITH A DISCOUNT RATE OF
22 40 PERCENT BASED UPON LITIGATION RISK, WHICH IS HOW WE DERIVE
23 117 MILLION.

24 IS THIS EXACT SCIENCE?

25 NO, YOUR HONOR, IT IS NOT. WE TRIED TO APPROACH THIS WITH

1 THE METHODOLOGY OF USING AN EXPERT WHO HAS IDENTIFIED THE VALUE
2 OF THIS INFORMATION ON THE DARK WEB, AND BASED UPON MY
3 EXPERIENCE -- WELL, TODAY, OR MAYBE IN A FEW DAYS, I'LL HAVE
4 PRACTICED FOR 40 YEARS. AGAIN, SINCE 1999 IN THE AREA OF
5 PRIVACY DATA BREACH OR PRIVACY LITIGATION I THOUGHT THIS TO BE
6 A FAIR AND REASONABLE COMPROMISE OF THE LITIGATION IN WHICH IT
7 CONTINUES TO REMAIN RISKY.

8 DOES THE COURT HAVE ANY PARTICULAR QUESTIONS?

9 THE COURT: I DO. I DO. LET ME FOCUS ON YOUR
10 CY PRES REQUEST HERE. I'M CURIOUS ABOUT THE NEED TO GO TO MY
11 FORMER COLLEAGUE, YOU SUGGEST ELIZABETH LAPORTE, FOR
12 DETERMINATION OF A CY PRES RECIPIENT.

13 SHE'S AT JAMS NOW, AND I DON'T MEAN TO DISCOURAGE ANY WORK
14 TO HER, BUT IS THAT REALLY NECESSARY? I UNDERSTAND THAT THERE
15 HAVE BEEN CASES AND LITIGATION AND MENTION IN CASES ABOUT
16 CY PRES RECIPIENTS, AND I APPRECIATE YOUR PROPHYLACTIC LOOK AT
17 THIS TO PERHAPS AVOID ANY OF THAT.

18 BUT I'M JUST CURIOUS WHETHER THAT IS EVEN NECESSARY? I'M
19 WONDERING IF COUNSEL COULD MEET AND CONFER AND IDENTIFY TWO,
20 THREE, WHATEVER YOU WOULD LIKE, THAT YOU THINK FIT AN
21 APPROPRIATE RECIPIENT SHOULD THAT BE NECESSARY.

22 MR. YACHUNIS: YOUR HONOR, I WON'T SPEAK FOR
23 GOOGLE'S COUNSEL OF COURSE. I HAPPEN TO HAVE A LOT OF WORK IN
24 THE CY PRES AREA.

25 JUDGE PROCTOR IN THE NORTHERN DISTRICT OF ALABAMA JUST

1 CHALLENGED ME TO DISCUSS THE ISSUE IN A CASE PENDING BEFORE HIM
2 FOR FINAL APPROVAL. AND I USED MY EXPERIENCE AS A DRAFTER OF A
3 PROJECT THAT OUR CHIEF JUSTICE IN THE STATE OF FLORIDA ASKED ME
4 TO UNDERTAKE ABOUT FOUR YEARS AGO WHERE IN THE STATE OF FLORIDA
5 THE QUESTION REMAINED, YOU KNOW, WHAT GUIDANCE WAS THERE FOR A
6 JUDGE ON THE ISSUE OF CY PRES, AND I PREPARED A WHITE PAPER ON
7 THAT. I BELIEVE THERE ARE CERTAIN -- THERE WERE RECIPIENTS WHO
8 SHOULD BE CONSIDERED. THEY HAVE NOTHING TO DO WITH ME OR ANY
9 BOARD THAT I'VE EVER BEEN A MEMBER OF.

10 I THINK WE CAN DECIDE THAT.

11 I WAS JUST TRYING TO BE -- I THINK BOTH OF US, BOTH SIDES,
12 VERY PROPHYLACTIC IN THE WAY WE ENSURED THAT THERE WAS NO
13 COLLUSION, POSSIBLE INTERFERENCE OR SUGGESTION THAT WE HAD
14 ANYTHING INVOLVING ANY RECIPIENT OF ANY PARTY THAT THE COURT
15 WOULD AVOID.

16 SO OVER -- IT WAS PROBABLY OVERLY CAUTIOUS, BUT OF COURSE
17 I THINK WE CAN COME UP WITH ANY NUMBER OF CANDIDATES TO PROVIDE
18 FOR THE COURT AND FULLY DISCLOSE OUR LACK OF INVOLVEMENT IN ANY
19 OF THOSE ENTITIES, AND I CERTAINLY WOULD REPRESENT THAT TO THE
20 COURT. I WOULD HAVE NO INVOLVEMENT, AND THE COURT COULD MAKE
21 THOSE SELECTIONS.

22 AND I'VE DONE THE SAME THING IN OTHER SETTLEMENTS IN THIS
23 AREA.

24 THE COURT: ALL RIGHT. THANK YOU. I'LL HEAR FROM
25 MS. REES IN JUST A MOMENT ON THESE AND OTHER POINTS.

1 I ALSO WANT TO ASK A QUESTION ABOUT, YOU PROPOSE SOME
2 DEADLINES, SCHEDULING DEADLINES, AND I'M CURIOUS, SOME OF THOSE
3 TIMELINES SEEM TO BE BASED A LITTLE -- THEY MIGHT BE A LITTLE
4 LONG, LONGER THAN WHAT WE'VE SEEN OR USED TO, BUT IT SEEMS TO
5 ME THAT YOU HAVE DONE THIS, YOU AND YOUR TEAM AND MS. REES,
6 HAVE DONE THIS IN REGARDS TO THE CURRENT COVID CRISIS THAT
7 PERHAPS MIGHT ALLOW FOR SOME GREATER TIME TO CAPTURE RESPONSES
8 AND OPT OUTS AND THINGS.

9 MR. YACHUNIS: AND, YOUR HONOR, OBVIOUSLY WE WANT TO
10 ENSURE THE SAME ISSUES THAT YOU'RE FOCUSED IN ON IS FAIRNESS
11 AND ADEQUATE RESPONSE TIME.

12 I'M CERTAINLY AMENABLE TO A CHANGE OR MODIFY. THEY ARE
13 LONGER.

14 ONE OF THE THINGS I WANT TO MAKE CERTAIN THAT THE COURT
15 UNDERSTANDS IS THAT WE'RE GOING TO BE ABLE TO DELIVER AN E-MAIL
16 NOTICE, WHICH IS NOW ACCEPTABLE UNDER THE NEW RULE AMENDMENT
17 23.

18 ONE OF THE WAYS IN WHICH AN ACCOUNT HOLDER SIGNED UP FOR A
19 GOOGLE PLUS WAS THROUGH AN E-MAIL, AND SO WE'LL BE ABLE TO
20 CONTACT THEM, AND WE DO HAVE A SECOND WAVE OF NOTICE EMBEDDED
21 WITHIN THE NOTICE PLANS SO IN THE EVENT SOMEBODY MISSES THE
22 FIRST ONE, THEY'LL GET A SECOND ONE IN ADVANCE OF THE CLAIM
23 DEADLINE.

24 THE COURT: WELL, THIS IS ONE OF THOSE CASES WHERE
25 IDENTIFYING THE PARTIES SHOULD BE RELATIVELY EASY BECAUSE, AS

10:17AM 1 YOU SAY, THE PARTY HAD TO MAKE SOME AFFIRMATIVE ACTION TO
10:17AM 2 ACTUALLY JOIN OR SIGN UP OR ENGAGE AND IN THAT PROCESS PROVIDED
10:17AM 3 INFORMATION SUCH THAT GOOGLE HAS THAT.

10:17AM 4 SO I THINK THE -- IDENTIFYING WHO THE PARTIES ARE,
10:17AM 5 PLAINTIFFS ARE, SHOULD BE -- NOTIFYING THEM, SHOULD BE
10:17AM 6 STRAIGHTFORWARD. OF COURSE THERE WILL BE CHANGES IN E-MAILS
10:17AM 7 AND PEOPLE MOVE AND THAT TYPE OF THING. YOU HAVE INDICATED
10:17AM 8 PUBLICATION, YOU HAVE SOME PUBLICATION THAT YOU'LL USE, A
10:17AM 9 PR FIRM OR SOMETHING OR WEBSITE AND THEY WILL BE CREATED BY THE
10:17AM 10 ADMINISTRATOR AS WELL.

10:17AM 11 SO IT SEEMS TO ME THAT THE NOTICE IS SUFFICIENT HERE. I
10:17AM 12 DON'T HAVE ANY CONCERN ABOUT THAT.

10:17AM 13 AS WE LOOK AT GOING FORWARD IN OUR CURRENT HEALTH CRISIS,
10:17AM 14 I THINK MY COLLEAGUES AND I ARE LOOKING AT THE NOTICE
10:18AM 15 PROCEDURES AND ANYTHING THAT HAS TO DO WITH NOTIFYING, ALLOWING
10:18AM 16 PARTIES TIME TO ACCOMPLISH THINGS AND BALANCING THE COVID
10:18AM 17 CRISIS WITH THE TIMELINES THAT WE TYPICALLY HAVE HAD WHEN WE'VE
10:18AM 18 HAD ACCESS TO COURTHOUSES AND OTHER FACILITIES WAS MUCH EASIER.
10:18AM 19 SO I'M COGNIZANT OF THAT.

10:18AM 20 I'M NOT ADVERSE TO LENGTHIER TIMES, PARTICULARLY IN OUR
10:18AM 21 CURRENT SITUATION. I JUST DID WANT TO COMMENT ON THAT.

10:18AM 22 MR. YACHUNIS: YOUR HONOR, LET ME -- I HOPE THIS IS
10:18AM 23 AN INVITATION TO DISCUSS THE ISSUE. IF WE WERE DEALING WITH
10:18AM 24 U.S. MAIL, PERHAPS THE COVID-19 CRISIS MIGHT IMPACT MAIL
10:18AM 25 DELIVERY.

1 CERTAINLY THERE ARE SOME MEMBERS OF OUR COMMUNITIES WHO
2 ARE RETICENT TO TRY TO CUT PAPER DELIVERED TO THEIR HOMES. I
3 HAPPEN TO HAVE HAD AN EXPERIENCE RECENTLY WHERE SOMEBODY
4 REACHED OUT ON MY NEIGHBORHOOD CHAT AND SAID DOES ANYONE HAVE
5 ANY HYDROGEN PEROXIDE? AND I SAID, YES, I HAVE AN EXTRA
6 BOTTLE. AND THE WOMAN SAID COULD YOU LEAVE IT ON MY PORCH?
7 AND I WAS THINKING, WELL, WHY DON'T YOU JUST KNOCK ON MY DOOR.
8 AND THEN I REALIZED THERE'S A SENSITIVITY TO PEOPLE TOUCHING
9 THINGS THAT OTHERS HAVE TOUCHED.

10 HERE WE'RE DEALING WITH AN E-MAIL NOTICE THAT COMES TO
11 YOUR COMPUTER AND SO CERTAINLY THAT ISSUE ISN'T INVOLVED.

12 AND I JUST HAD A CONVERSATION IN CONNECTION WITH ANOTHER
13 CASE WHERE PEOPLE SAID, WELL, CLAIMS RATES ARE GOING TO GO UP
14 BECAUSE PEOPLE ARE AT HOME. THEY'RE GOING TO BE MONITORING
15 THEIR COMPUTER BECAUSE THEY HAVE MORE TIME ON THEIR HANDS. I
16 DON'T KNOW IF THAT ANECDOTAL COMMENT IS OF ANY VALUE, BUT
17 CERTAINLY WE'RE TRYING TO MAKE CERTAIN THAT IN THIS PRESENT
18 UNUSUAL ENVIRONMENT THAT EVEN BRINGS US TO TALK TO YOU TODAY
19 VIA ZOOM, YOU KNOW, ACCOMMODATES FOR THAT.

20 THE COURT: ALL RIGHT. THANK YOU.

21 THE OTHER FACTORS I WANTED TO ASK YOU ABOUT, AND I REALIZE
22 THIS IS PRELIMINARY APPROVAL, BUT I WONDERED IF YOU WERE GOING
23 TO SPEAK NOW OR AT THE TIME OF FINAL APPROVAL ABOUT THE
24 NORTHERN DISTRICT OF CALIFORNIA GUIDANCE FACTORS THAT WE HAVE
25 IMPLEMENTED RECENTLY.

1 AND I THINK YOU TOUCH ON THEM BRIEFLY, NOT SPECIFICALLY,
2 BUT YOUR PAPERS AT LEAST CAPTURE SOME OF THOSE ELEMENTS, AND IF
3 YOU CAN.

4 MR. YACHUNIS: YES, I CAN TOUCH ON THOSE. SO, YOUR
5 HONOR, ONE OF THE MOST IMPORTANT THINGS, AND I'VE HAD OTHER
6 CASES IN THE NORTHERN DISTRICT, IS, WELL, WHAT WOULD YOU GET IF
7 THE CLASS WERE TO SUCCEED? AND THAT'S THE VERY REASON WHY
8 WE'RE BEFORE YOU SEEKING TO COMPROMISE IS BECAUSE THAT'S THE
9 UNKNOWN.

10 ONE OF THE THINGS THE DEFENDANTS ARGUE IN THESE CASES IS
11 THE INDIVIDUALIZED NATURE OF THE REPERCUSSIONS FROM A DATA
12 BREACH, AND HERE WE'RE TALKING ABOUT A DATA EXPOSURE.

13 SO THE DEFENDANT MAY NOT HAVE GIVEN ME A PUSH ON STANDING
14 SAYING THAT YOU HAVE NO PROOF THAT THIS INFORMATION WAS TAKEN
15 BY ANYONE. IT WAS MERELY EXPOSED TO THESE THIRD PARTY
16 CONTRACTORS WHO WE HAD ALREADY APPROVED. THAT'S CERTAINLY
17 IMPORTANT.

18 BUT IN TERMS OF HOW ANYONE WAS INDIVIDUALLY DAMAGED, I
19 FOCUSED IN THROUGH MR. RATNER A WAY IN WHICH I COULD MONETIZE
20 THE AMOUNT OF THE VALUE OF THIS INFORMATION ON THE DARK WEB,
21 AND AS I INDICATED EARLIER, HE HAD BETWEEN \$0.20 AND \$29.

22 THE COURT: LET ME INTERRUPT YOU FOR A MOMENT AND
23 JUST OPINE THAT IT IS INTERESTING THAT WE'RE USING THAT AS A
24 DAMAGE MODEL, THAT IS, WHAT IS THE STREET VALUE OF THIS DOWN A
25 BACK ALLEY. IT'S LIKE WHAT IS THE VALUE OF MY CAR RADIO ONCE

10:21AM 1 IT'S STOLEN AND SOMEBODY WANTS TO SELL IT IN A DARK ALLEY AND
10:21AM 2 WE'LL USE THAT IN LITIGATION TO SET THE VALUE?

10:21AM 3 THERE'S SOMETHING THAT IS -- I UNDERSTAND YOU'RE DOING THE
10:21AM 4 BEST THAT YOU CAN, BUT THERE IS SOMETHING -- AND I DON'T MEAN
10:21AM 5 TO BE FLIP OR LIGHT ABOUT THIS, BUT WE'RE LOOKING AT NEFARIOUS
10:22AM 6 CONDUCT IN USING THAT AS A BENCHMARK FOR LEGITIMATE
10:22AM 7 TRANSACTIONS, AND I SUPPOSE IT'S JUST IRONIC MAYBE, MAYBE OTHER
10:22AM 8 PEOPLE WOULD USE DIFFERENT LANGUAGE TO DESCRIBE THAT, BUT IT IS
10:22AM 9 WHAT IT IS, ISN'T IT?

10:22AM 10 MR. YACHUNIS: IT'S NOT IRONY. IT IS -- WHEN YOU
10:22AM 11 THINK OF PRIVACY, THE CONCEPT OF PRIVACY AT LEAST IN THE UNITED
10:22AM 12 STATES ARISES IN JURISPRUDENCE IN THE 19TH CENTURY.

10:22AM 13 AND IN ESSENCE THAT LAW REALLY REMAINS THE SAME UNTIL THE
10:22AM 14 21ST CENTURY, AND TODAY WE HAVE TECHNOLOGY OF A TYPE THAT
10:22AM 15 DOESN'T FIT THE CONCEPTS OF PRIVACY.

10:22AM 16 CALIFORNIA CERTAINLY HAS BEEN ON THE CUTTING EDGE, I
10:22AM 17 BELIEVE, OF BOTH STATE AND FEDERAL REGULATORS IN TERMS OF
10:22AM 18 CREATING A WAY IN WHICH PEOPLE CAN THINK MORE ABOUT PRIVACY.

10:22AM 19 THE COURT: CALIFORNIA JUST ENACTED NEW LEGISLATION
10:22AM 20 THAT YOU'RE PROBABLY AWARE OF THAT COMPANIES -- MS. REES IS
10:23AM 21 PROBABLY ADVISING COMPANIES IN REGARDS TO CALIFORNIA'S NEW
10:23AM 22 REGULATIONS AND STATE REGULATIONS THAT ARE JUST AMAZINGLY
10:23AM 23 THOROUGH AND REQUIRES A LOT OF EFFORT, I'M SURE, ON MS. REES'S
10:23AM 24 CLIENTS TO REMANUFACTURE AND RESTRUCTURE HOW THEY HANDLE ISSUES
10:23AM 25 RECOGNIZING THIS.

10:23AM 1 SO I APPRECIATE YOUR SHOUT OUT TO THE GREAT STATE OF
10:23AM 2 CALIFORNIA.

10:23AM 3 WE DO REMAIN HERE, I THINK THE STATE REMAINS ON THE
10:23AM 4 FOREFRONT OF THIS LITIGATION.

10:23AM 5 BUT I WAS JUST MAKING A COMMENT ABOUT WHERE DO YOU GO TO
10:23AM 6 PRICE THIS? IT'S NOT LIKE WHAT IS THE PRICE OF CUCUMBERS AND
10:23AM 7 TOMATOES AT MARKETS. IT'S REALLY LET'S GO DOWN THE DARK ALLEY
10:23AM 8 AND SEE WHAT THEY'LL GIVE FOR THAT. I'M NOT DISPARAGING IT AT
10:23AM 9 ALL, I'M JUST SUGGESTING AND IT'S THE MARKETPLACE THAT WE LIVE
10:23AM 10 IN IN SOME OF THESE CASES, SO I CAPTURE THAT.

10:23AM 11 BUT MY QUESTION WAS FOCUSSED ON THE GUIDANCE FACTORS THAT
10:24AM 12 THE NORTHERN DISTRICT HAS, AND WE HAVE 11 OF THEM. I DON'T
10:24AM 13 THINK THE PLEADINGS SPECIFICALLY ADDRESSED EACH OF THE 11
10:24AM 14 FACTORS, BUT I CAN LOOK AT WHAT YOU'VE SAID IN YOUR PLEADINGS,
10:24AM 15 IN YOUR COMMENTS THIS MORNING REGARDING THE PROPOSED SETTLEMENT
10:24AM 16 AND THE FACTORS, WE CAN ADDRESS THOSE AT THE FINAL SETTLEMENT,
10:24AM 17 AND I THINK THAT'S PROBABLY MORE APPROPRIATE, YOU'LL TALK AND
10:24AM 18 GIVE AN EXAMPLE ABOUT OPT OUTS AND THOSE TYPES OF THINGS.

10:24AM 19 YOU'VE ALREADY TOLD ME ABOUT THE ADMINISTRATOR, YOU'VE
10:24AM 20 TALKED ABOUT THE NOTICE, YOU'VE TALKED ABOUT ATTORNEYS' FEES,
10:24AM 21 YOU'VE TALKED ABOUT SERVICE. I THINK YOU'VE INDICATED, AT
10:24AM 22 LEAST PERIPHERALLY, THAT THERE IS NO -- THE AWARDS DON'T
10:24AM 23 UNJUSTLY FAVOR ANY PLAINTIFFS OVER OTHERS, AND THE SETTLEMENT
10:24AM 24 PROVIDES A FAVORABLE RECOVERY, I THINK YOU'VE TALKED ABOUT
10:24AM 25 THAT.

10:24AM 1 THERE IS A DIFFERENCE IN THE -- I THINK YOUR PLEADINGS
10:24AM 2 INITIALLY AS TO THE CLASS AS TO WHAT THIS SETTLEMENT INVOLVES,
10:25AM 3 AND I THINK YOU'VE EXPLAINED THAT TO ME AS WELL. SO I DO THINK
10:25AM 4 THAT YOU HAVE COVERED SUFFICIENTLY THE NORTHERN DISTRICT
10:25AM 5 FACTORS. WE HAVE TALKED ABOUT CY PRES AWARDS.

10:25AM 6 AND UNLESS THERE'S ANYTHING FURTHER, I'LL TURN TO
10:25AM 7 MS. REES, WHO HAS BEEN INCREDIBLY PATIENT HERE, AND ASK IF SHE
10:25AM 8 HAS ANY COMMENTS IN REGARDS TO THE PRELIMINARY SETTLEMENT
10:25AM 9 MOTION.

10:25AM 10 MS. REES.

10:25AM 11 MS. REES: THANK YOU, YOUR HONOR.

10:25AM 12 ARE YOU ABLE TO HEAR ME OKAY?

10:25AM 13 THE COURT: I AM, YES.

10:25AM 14 MS. REES: OKAY. I'LL HOLD UP MY MICROPHONE HERE
10:25AM 15 JUST TO BE SURE. SO FIRST I WOULD JUST LIKE TO THANK THE COURT
10:25AM 16 STAFF FOR PUTTING THIS ZOOM CONFERENCE TOGETHER SO THAT WE CAN
10:25AM 17 GO FORWARD WITH THE HEARING. I KNOW IT MUST HAVE BEEN A LOT OF
10:25AM 18 EXTRA WORK SO WE'RE DEFINITELY VERY APPRECIATIVE OF THAT.

10:25AM 19 THE COURT: WELL, WE'RE IN CALIFORNIA, MS. REES, AND
10:25AM 20 WE ALL HAVE -- WE'RE BORN WITH TECHNOLOGY. WE'RE WEANED ON IT.
10:25AM 21 OF COURSE. THANK YOU FOR SHOUTING OUT MS. KRATZMANN AND MY
10:25AM 22 STAFF TO HELP THOSE OF US WHO ARE IMMIGRANTS TO TECHNOLOGY TO
10:26AM 23 LEARN THIS AND CAPTURE.

10:26AM 24 AND THANK YOU ALL. PARDON ME FOR INTERRUPTING YOU, BUT I
10:26AM 25 DO WANT TO INDICATE THAT WE ARE PROCEEDING BY WAY OF

10:26AM 1 VIDEOCONFERENCING BECAUSE OF THE COVID CRISIS. I APPRECIATE
10:26AM 2 ALL OF YOUR WILLINGNESS IN DIFFERENT PARTS OF OUR GREAT COUNTRY
10:26AM 3 TO PARTICIPATE.

10:26AM 4 SO MS. REES.

10:26AM 5 MS. REES: THANK YOU. SO I THINK THE FIRST POINT
10:26AM 6 I'D LIKE TO ADDRESS IS THE CY PRES ISSUE THAT YOUR HONOR
10:26AM 7 RAISED. WE DID, YOU KNOW, PREFER TO HAVE AT THIS SETTLEMENT
10:26AM 8 THIS PROCEDURE OF HAVING A NEUTRAL THIRD PARTY SELECT CY PRES
10:26AM 9 RECIPIENTS, AND THAT'S REALLY BECAUSE WE HAVE RECENTLY SEEN
10:26AM 10 QUITE A FEW OBJECTIONS TO SETTLEMENTS THAT INCLUDE CY PRES, AND
10:26AM 11 ONE OF THE MAJOR OBJECTIONS IS A CLAIM THAT THE PARTIES ARE
10:26AM 12 SELECTING CY PRES RECIPIENTS THAT THEY HAVE CONNECTIONS TO, AND
10:26AM 13 THAT IT JUST ISN'T A NEUTRAL ENOUGH PROCESS.

10:26AM 14 SO YOUR HONOR IS CORRECT THAT THE REASON THAT IT'S IN
10:26AM 15 THERE IS THAT, YOU KNOW, WE ARE HOPING TO AVOID THOSE TYPES OF
10:26AM 16 ISSUES WITH THIS SETTLEMENT, SO THAT WAS THE REASON FOR THAT.

10:27AM 17 SO WE ARE HAPPY TO MEET AND CONFER WITH PLAINTIFFS ABOUT
10:27AM 18 SELECTING RECIPIENTS.

10:27AM 19 BUT THE THIRD PARTY PROCESS WITH THE NEUTRAL WAS SOMETHING
10:27AM 20 THAT WE REALLY HOPED WOULD, YOU KNOW, JUST HELP JUST TO DEAL
10:27AM 21 WITH ANY POTENTIAL OBJECTIONS THAT MIGHT COME ALONG IN THAT
10:27AM 22 REGARD.

10:27AM 23 THE COURT: WELL, I THINK IT'S A GOOD SOLUTION.
10:27AM 24 IT'S A FORWARD LOOKING SOLUTION, AND IT DIMINISHES, DOES IT,
10:27AM 25 THEN WHAT WOULD BE PAID OUT OF THE SETTLEMENT PROCEEDS?

10:27AM 1 MS. REES: IT WOULD BE. IT WOULD BE.

10:27AM 2 WE DID TRY TO DRAFT A PROCEDURE THAT WOULD BE FAIRLY
10:27AM 3 STREAMLINED WHERE THE BURDEN WOULD BE ON THE CY PRES RECIPIENTS
10:27AM 4 TO PUT TOGETHER ESSENTIALLY AN APPLICATION WHERE THEY WOULD
10:27AM 5 JUST PROVIDE INFORMATION ABOUT WHAT THEY DO, WHAT CONNECTIONS
10:27AM 6 THEY HAVE TO THE PARTIES, IF ANY. AND THEN JUDGE LAPORTE'S
10:27AM 7 ROLE WOULD REALLY BE TO REVIEWING THAT, WHATEVER APPLICATIONS
10:27AM 8 COME IN, AND THEN MAKING THE DECISION AMONG THOSE WHICH, IF
10:27AM 9 ANY, TO RECOMMEND.

10:27AM 10 SO IT DIDN'T SEEM LIKE IT WOULD BE A HUGE AMOUNT OF WORK
10:28AM 11 FOR THE NEUTRAL.

10:28AM 12 THE COURT: PROBABLY NOT. IT PROBABLY WOULDN'T.

10:28AM 13 OF COURSE THE COURT SITS AS FIDUCIARY FOR THE CLASS, AND
10:28AM 14 I'M JUST CURIOUS WHETHER THAT WOULD IN SOME WAY INHIBIT
10:28AM 15 RECOVERY AND WHAT THE EXTENT OF IT WAS. I DON'T KNOW WHAT THE
10:28AM 16 FEES OF THAT WOULD BE, \$10,000, \$20,000. I HAVE NO IDEA WHAT
10:28AM 17 THAT MARKET IS.

10:28AM 18 THIS IS -- WE'RE PROBABLY TALKING ABOUT, MS. REES, SOME OF
10:28AM 19 YOUR COLLEAGUES WHO SHOULD WISH TO LEAVE, OR MR. AZAR OR
10:28AM 20 MR. YACHUNIS, THIS SOUNDS LIKE SOMEBODY COULD CREATE A CLEARING
10:28AM 21 HOUSE FOR CY PRES RECIPIENTS AND CREATE A WHOLE NEW JOB MARKET
10:28AM 22 FOR THEMSELVES SHOULD THEY WISH TO DO SO.

10:28AM 23 BUT I DON'T HAVE -- I'M NOT -- I DON'T HAVE ANY REAL
10:28AM 24 OBJECTION TO JUDGE LAPORTE LOOKING AT THIS AND HELPING YOU OUT
10:28AM 25 AND FINDING THIS. AND I COMMENT ON IS IT NECESSARY? AND I

1 APPRECIATE THE FACT THAT YOU WISH TO OR BOTH SIDES WISH TO
2 PROCEED WITH EXTREME CAUTION TO ADVANCE YOUR SETTLEMENT.

3 AS I LOOK AT THE SETTLEMENT, THIS CASE SETTLED WITH OR THE
4 SETTLEMENT WAS REACHED ABOUT A YEAR AFTER THE FILING OF THE
5 FIRST COMPLAINT, MAYBE NOT EVEN.

6 MY SENSE IS THAT IT LOOKS LIKE THERE WAS NO REAL -- THERE
7 WERE NO DEPOSITIONS, THERE WAS INFORMAL DISCOVERY, AND THEN THE
8 CASE SETTLED ONE DAY WITH A GOOD MEDIATOR. IT SEEMS TO BE
9 PRETTY STRAIGHTFORWARD.

10 BUT LET ME LET YOU CONTINUE, MS. REES. I'M SORRY.

11 MS. REES: THANK YOU. SO ON THE ISSUE OF E-MAIL
12 NOTICE, YOU KNOW, WE ARE PUTTING TOGETHER A LIST OF E-MAILS OF
13 THE GOOGLE PLUS USERS THAT COULD POTENTIALLY HAVE BEEN AFFECTED
14 BY THESE BUGS.

15 WE -- GOOGLE DOESN'T HAVE DATA THAT WOULD ALLOW IT TO
16 SPECIFICALLY IDENTIFY EACH PERSON THAT QUALIFIES AS A MEMBER OF
17 THE CLASS, BUT CERTAINLY THERE ARE E-MAIL ADDRESSES ASSOCIATED
18 WITH THESE GOOGLE PLUS ACCOUNTS, SO THAT'S SOMETHING THAT CAN
19 BE GATHERED FOR PURPOSES OF THE E-MAIL NOTICE, YOU KNOW,
20 SUBJECT ONLY TO, AS YOUR HONOR MENTIONED, OCCASIONALLY THERE
21 WILL BE BOUNCE BACKS OR SOMEONE WHO DELETED THEIR E-MAILS SO
22 THERE IS SOME EDGE CASES WHERE SOMEONE MIGHT NOT GET THE
23 E-MAIL, BUT FOR THE MOST PART WE DO THINK THE E-MAIL IS A VERY
24 GOOD AND COMPREHENSIVE WAY OF DOING THE NOTICE HERE.

25 ONE OTHER ISSUE I JUST WANTED TO REPORT ON IS THAT THE

10:30AM 1 DEFENDANTS DID DO THE CAFA NOTICE TO GOVERNMENT OFFICIALS.
10:30AM 2 THAT WAS DONE IN JANUARY. SO FOUR MONTHS AGO. WE HAVEN'T
10:30AM 3 RECEIVED ANY RESPONSES FROM THE GOVERNMENT OFFICIALS ON THAT,
10:30AM 4 AND SO THAT'S THE STATUS OF THE CAFA NOTICE.

10:30AM 5 THE COURT: THANK YOU.

10:30AM 6 MS. REES: AND THEN BEYOND THAT WE DO BELIEVE THAT
10:30AM 7 THIS IS A VERY FAIR AND ADEQUATE SETTLEMENT. AS I THINK, YOU
10:30AM 8 KNOW, PLAINTIFFS' COUNSEL, FRANKLY, ACKNOWLEDGED THERE WERE A
10:30AM 9 LOT OF CHALLENGES FOR PLAINTIFFS IN TRYING TO PROVE LIABILITY
10:30AM 10 AND DAMAGES HERE.

10:30AM 11 THIS IS A CASE WHERE THE TYPE OF INFORMATION THAT WAS AT
10:30AM 12 ISSUE THAT WAS EXPOSED BY THESE BUGS WAS REALLY JUST THE
10:30AM 13 PROFILE FIELDS IN SOMEONE'S SOCIAL MEDIA ACCOUNTS, SO IT'S
10:31AM 14 THINGS LIKE NAME, HOME TOWN, OCCUPATION. IT WAS NOT FIELDS
10:31AM 15 THAT ARE ASKING FOR YOUR SOCIAL SECURITY NUMBER, CREDIT CARD,
10:31AM 16 ANY OF THESE REALLY PRIVATE SENSITIVE TYPES OF DATA THAT YOU
10:31AM 17 OFTEN SEE IN THESE BREACHES.

10:31AM 18 SO THAT HAD BEEN ONE OF THE ISSUES THAT, YOU KNOW, FOR THE
10:31AM 19 MOST PART THIS INFORMATION ISN'T GOING TO BE EXTREMELY
10:31AM 20 SENSITIVE, BUT IN SOME CASES SOME PEOPLE COULD HAVE HAD THAT
10:31AM 21 INFORMATION IN THERE, AND THAT'S WHY THE CLASS IS DIRECTED TO
10:31AM 22 ANYONE WHO DID HAVE PRIVATE INFORMATION IN THOSE GOOGLE PLUS
10:31AM 23 PROFILE DEALS.

10:31AM 24 BUT I THINK, AS PLAINTIFFS' COUNSEL ALSO MENTIONED, THIS
10:31AM 25 WAS A CASE ABOUT INADVERTENT SOFTWARE BUGS. THIS IS NOT A CASE

1 OF CLAIMING SOME KIND OF INTENTIONAL OR DELIBERATE DISCLOSURE
2 OF INFORMATION. THIS IS A CASE WHERE THERE WAS NO REASON TO
3 THINK THAT ANY OF THE INFORMATION THAT WAS EXPOSED WAS ACTUALLY
4 MISUSED. SO THERE WERE, I THINK, A LOT OF ISSUES HERE WITH
5 RESPECT TO PLAINTIFFS' CASE THAT WE HAD RAISED IN OUR MOTION TO
6 DISMISS THAT WAS PENDING WHEN WE WENT AHEAD AND DID THE
7 MEDIATION WITH RANDALL WULFF AND WE WERE ABLE TO REACH THE
8 SETTLEMENT, BUT WE DO BELIEVE IN LIGHT OF THAT IT IS VERY FAIR
9 AND ADEQUATE.

10 THE COURT: THANK YOU. AND YOU MENTIONED ONE OF THE
11 GUIDANCE FACTORS, THE N.D. CAL GUIDANCE FACTORS, WHICH WAS THE
12 CAFA NOTICE, AND SO THANK YOU FOR CAPTURING THAT.

13 I ALSO LOOK AT THE RELIEF, THERE IS NOT INJUNCTIVE RELIEF,
14 AND I THINK WE'VE HEARD OF THAT, AND THERE'S NO REQUEST THAT
15 GOOGLE PAY FOR SECURITY PROVIDERS OR PEOPLE WHO MONITOR CREDIT
16 REPORTS AND THINGS. WE SOMETIMES SEE THAT IN SETTLEMENTS WHERE
17 THERE HAVE BEEN ACTUAL BREACHES OF SENSITIVE INFORMATION, ET
18 CETERA.

19 HERE IT'S A PEEK AT NAMES, PERHAPS ADDRESSES, BUT A PEEK
20 THAT IT APPEARS THAT THE INDIVIDUAL SHOULD NOT HAVE HAD ACCESS
21 TO, AND THAT'S WHAT IT IS.

22 ALL RIGHT. THANK YOU VERY MUCH.

23 AND THE ATTORNEYS' FEES, IT LOOKS LIKE IT'S THE -- THE
24 REQUEST IS FOR UP TO 25 PERCENT, AND GOOGLE RESERVES THE RIGHT
25 TO CHALLENGE ANY REQUEST IN EXCESS OF THAT.

10:33AM 1 IS THAT RIGHT, MS. REES?

10:33AM 2 MS. REES: YES, THAT'S CORRECT?

10:33AM 3 THE COURT: THANK YOU.

10:33AM 4 ALL RIGHT. ANYTHING FURTHER? MR. AZAR, YOU HAVE BEEN
10:33AM 5 ELOQUENT IN YOUR SILENCE, SIR. ANYTHING YOU WOULD LIKE TO ADD
10:33AM 6 TO THE CONVERSATION?

10:33AM 7 MR. AZAR: NO. JUDGE, I MISS BEING IN CALIFORNIA.

10:33AM 8 THE COURT: WELL, IT'S ALWAYS HERE. YOU ARE
10:33AM 9 WELCOME.

10:33AM 10 MR. AZAR: I WISH I COULD COME OUT THERE. I WENT TO
10:33AM 11 LAW SCHOOL IN SANTA CLARA, AND I WISH I COULD COME OUT THERE
10:33AM 12 AND VISIT. MY DAUGHTER LIVES IN SAN FRANCISCO, AND I'M STUCK
10:33AM 13 HERE AT HOME AND QUARANTINED.

10:33AM 14 THE COURT: WELL, YES, YES, WE'RE ALL SUFFERING THAT
10:33AM 15 BUT BETTER SAFE.

10:33AM 16 YOU KNOW, I WAS JUST AT A MEETING YESTERDAY WHERE WE WERE
10:33AM 17 DISCUSSING HOW THE CIRCUITS AND COURTS ARE GOING TO RESUME
10:33AM 18 OPERATIONS, AND I SHOULD TELL YOU THAT THE SPIRIT OF THE COURT
10:33AM 19 IS THAT WE WILL RESUME OUR OPERATIONS BUT ALWAYS WITH AN EYE
10:34AM 20 TOWARDS THE SAFETY OF THE PUBLIC AND OUR STAFF, AND THAT'S
10:34AM 21 PARAMOUNT.

10:34AM 22 SO AGAIN, PROCEEDING THIS WAY THROUGH THE ZOOM VENUE AND
10:34AM 23 OTHERS THAT WE'RE USING IS -- ALLOWS THE BUSINESS OF THE COURTS
10:34AM 24 TO GO FORWARD, IT ALLOWS YOUR RESPECTIVE CLIENTS TO HAVE THEIR
10:34AM 25 DAY IN COURT UNIMPEDED BY THE CRISIS AND WE, THE COURTS,

10:34AM 1 ENDEAVOR TO DO ALL OF THIS AND TO ACCOMPLISH WHAT WE CAN TO
10:34AM 2 ASSIST YOU AND YOUR CLIENTS AS WE GO FORWARD.

10:34AM 3 SO THANK YOU VERY MUCH.

10:34AM 4 ANYTHING FURTHER THEN FROM THE PLAINTIFFS ON THE MOTION
10:34AM 5 FOR PRELIMINARY APPROVAL?

10:34AM 6 MR. YACHUNIS: NO, YOUR HONOR.

10:34AM 7 IF YOU COULD INDULGE ME. ABOUT TWO AND A HALF HOURS AGO
10:34AM 8 MY FIRST GRANDSON, JAMES HENRY YACHUNIS, WAS BORN, AND IF I WAS
10:34AM 9 A LITTLE BIT DISCOMBOBULATED THIS MORNING IT WAS BECAUSE OF THE
10:34AM 10 EXCITEMENT OF MY FIRST GRANDSON. I AM VERY HAPPY.

10:34AM 11 THE COURT: WELL, CONGRATULATIONS. I'M SURE YOU'LL
10:34AM 12 TELL HIM THAT ON HIS BIRTHDAY YOU WERE IN FEDERAL COURT,
10:35AM 13 VIRTUALLY IN FEDERAL COURT. WELL, I APPRECIATE THAT.

10:35AM 14 ALL RIGHT. THANK YOU FOR THAT. THANK YOU FOR THE
10:35AM 15 DISCUSSION THIS MORNING. IT WAS HELPFUL. I DO, LOOKING AT THE
10:35AM 16 TOTALITY OF THE CIRCUMSTANCES AND YOUR PLEADINGS, YOU HAVE LAID
10:35AM 17 OUT A SETTLEMENT IN THIS CASE THAT IS FAIR, ADEQUATE, AND
10:35AM 18 REASONABLE.

10:35AM 19 THE COURT WILL GRANT THE RELIEF REQUESTED. I'LL CERTIFY
10:35AM 20 THE SETTLEMENT CLASS AS DEFINED. I WILL GRANT PRELIMINARY
10:35AM 21 APPROVAL OF THE SETTLEMENT AGREEMENT. THE NOTICE PROVISIONS
10:35AM 22 THAT YOU'VE CREATED ARE APPROPRIATE. IF I HAVEN'T PREVIOUSLY,
10:35AM 23 I THINK I HAVE THOUGH, I'LL APPOINT OR REAPPOINT THE CLASS
10:35AM 24 COUNSEL AS INDICATED AND REQUESTED AND APPOINT THE NAMED
10:35AM 25 PLAINTIFFS AS CLASS REPRESENTATIVES.

10:35AM 1 NOW, WHAT DATE SHOULD WE SET FOR FINAL APPROVAL? NOW, LET
10:35AM 2 ME INDICATE THAT I'M HAPPY TO ACCEPT THE DATES THAT YOU HAVE
10:36AM 3 OFFERED IN YOUR ORDER.

10:36AM 4 MAYBE I'LL DO THIS, AND MAYBE THE MOST PRUDENT THING TO DO
10:36AM 5 IS THIS, IS TO ASK YOU TO MEET AND CONFER TO FINALIZE THE
10:36AM 6 NOTICE SCHEDULES AND THEN YOU CAN SUGGEST A FINAL DATE AFTER
10:36AM 7 YOU TALK WITH MS. KRATZMANN, AND SHE'LL BE ABLE TO PROVIDE YOU
10:36AM 8 A FINAL SETTLEMENT DATE THAT -- ON OUR CALENDARS JUST BECAUSE
10:36AM 9 DEPENDING ON HOW MUCH TIME YOU NEED, WE'LL HAVE TO LOOK AND SEE
10:36AM 10 WHAT OUR OPERATIONS PERMIT FOR THAT PURPOSE.

10:36AM 11 I'M HAPPY TO INCLUDE THE RECOMMENDATION THAT JUDGE LAPORTE
10:36AM 12 BE CONTACTED TO IDENTIFY THE CY PRES RECIPIENT AND RECEIVE
10:36AM 13 THAT -- YOU'LL RECEIVE THAT, AND YOU'LL INCLUDE AT LEAST HER
10:36AM 14 RECOMMENDATION AND THE REASONS FOR IT IN YOUR PROPOSED
10:36AM 15 SETTLEMENT, FINAL SETTLEMENT FOR FINAL APPROVAL.

10:36AM 16 DOES THAT MAKE SENSE TO YOU?

10:36AM 17 MR. YACHUNIS: IT DOES, YOUR HONOR. SHOULD WE
10:36AM 18 SUBMIT IN CHAMBERS, ONCE MS. REES AND I HAVE HAD A CHANCE TO
10:37AM 19 TALK TO MS. KRATZMANN WITH THAT DATE, A WORD VERSION OF THE
10:37AM 20 ORDER THAT IS SUBMITTED AS AN EXHIBIT?

10:37AM 21 THE COURT: YES.

10:37AM 22 MR. YACHUNIS: WE'LL DO THAT.

10:37AM 23 THE COURT: YES. A WORD VERSION WOULD BE
10:37AM 24 PREFERABLE, RIGHT, ADRIANA? YOU'D LIKE THAT AND THEN YOU CAN
10:37AM 25 MODIFY IF NEEDED?

10:37AM 1 THE CLERK: YES, YOUR HONOR.

10:37AM 2 THE COURT: ALL RIGHT. THANK YOU. IS THERE

10:37AM 3 ANYTHING ELSE? LET ME INDICATE, IF I HADN'T, THE COURT FINDS

10:37AM 4 THAT THIS SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.

10:37AM 5 RULE 23 HAS BEEN MET, AND THE COURT WILL PRELIMINARILY

10:37AM 6 APPROVE THIS SETTLEMENT AS INDICATED. AND WE'LL WAIT TO HEAR

10:37AM 7 FROM YOU AND YOUR DOCUMENT AS TO WHAT YOU WOULD LIKE AS A FINAL

10:37AM 8 APPROVAL DATE AND WE'LL SELECT THAT.

10:37AM 9 HOPEFULLY THAT CAN BE IN PERSON. IF NOT, WE HAVE THE

10:37AM 10 BENEFIT OF THIS TECHNOLOGY TO PROCEED IF WE NEED TO.

10:37AM 11 ANYTHING FURTHER, COUNSEL?

10:37AM 12 MR. YACHUNIS: NO, YOUR HONOR, NOT FROM PLAINTIFFS.

10:37AM 13 MS. REES: NO, YOUR HONOR.

10:37AM 14 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. WE'LL

10:38AM 15 DISENGAGE THIS. IT'S GREAT SEEING YOU ALL HERE AND BE SAFE AND

10:38AM 16 YOU AND YOUR FAMILIES AND WE'LL SEE YOU SOON. THANK YOU.

10:38AM 17 MS. REES: THANK YOU.

10:38AM 18 THE CLERK: THANK YOU. THANK YOU.

10:38AM 19 (COURT CONCLUDED AT 10:38 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: MAY 26, 2020